

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION**

BEULAH GAINES	§	
<i>Plaintiff,</i>	§	
	§	
	§	
v.	§	CIVIL ACTION NO.
	§	
UNITED STATES OF AMERICA	§	
<i>Defendant.</i>	§	

PLAINTIFF'S ORIGINAL COMPLAINT

Plaintiff, Beulah Gaines, individually, hereby complains of the United States of America, and would respectfully show the Court the following:

I.

PARTIES, JURISDICTION, SERVICE OF PROCESS AND VENUE

- 1.1 This is a case arising out of bodily injuries caused by a United States Postal Service truck.
- 1.2 Plaintiff Beulah Gaines is an individual that is a citizen of the state of Texas, and is a resident of Beaumont, Texas.
- 1.3 Defendant, is the United States of America.
- 1.4 This Federal District Court has jurisdiction of this cause, because this action is brought to and in compliance with 28 U.S.C. §§1346(b), 2671-2680 *et seq.*, commonly known as the “Federal Tort Claims Act,” and 39 U.S.C. §409(c) which

vests exclusive subject matter jurisdiction of Federal Tort Claims litigation in the Federal District Court.

- 1.5 Defendant, United States of America, may be served by serving the United States of America through delivering a copy of the summons and of the complaint to the United States Attorney for the Eastern District of Texas, Joseph D. Brown, at 350 Magnolia Avenue, Ste. 150, Beaumont, Texas 77701, and by sending a copy of the summons and of the complaint by certified mail to William Barr, Attorney General of the United States, at 10th and Constitution Avenue, N. W., Washington, D.C. 20530.
- 1.6 Venue is proper in this district pursuant to 28 U.S.C. §1391(e) and 28 U.S.C. §1402(b), as the United States is a Defendant and Plaintiff resides in this district and has her domicile in this district. Further, venue is proper in this district pursuant to 28 U.S.C. §1391(e) and §1402(b) as the United States is a Defendant and a substantial part of the events or omissions giving rise to the claim occurred in this district.

II.

LIABILITY OF THE UNITED STATES OF AMERICA

- 2.1 This case is commenced and prosecuted against the United States of America pursuant to and in compliance with Title 28 U.S.C. §§2671-2680, commonly referred to as the “Federal Tort Claims Act,” and 39 U.S.C. §101 *et seq.*, commonly referred to as the “Postal Reorganization Act.” Liability of the United States is

predicated specifically on Title 28 U.S.C. §§1346(b)(1) and 2647 and 39 U.S.C. §409 because the personal injuries and resulting damages of which complaint is made, were proximately caused by the negligence, wrongful acts and/or omissions of employees of the United States of America while working for the United States Postal Service, in Beaumont, Texas while acting within the course and scope of his employment, under circumstances where the United States of America, if a private person, would be liable to the Plaintiff in the same manner and to the same extent as a private individual.

III.

JURISDICTIONAL PREREQUISITES

3.1 Plaintiff pleads pursuant to Title 28 U.S.C. §§2672 and 2675(a), that the claims set forth herein were filed with and presented administratively to the Defendant's agency the United States Postal Service on November 13, 2018. Greater than five (5) months has passed since these claims have been presented, and the United States Postal Service has failed to resolve the claims. Accordingly, all claims are deemed denied and Plaintiff has complied with all jurisdictional prerequisites and conditions precedent to commencement and prosecution of this litigation.

IV.

**THE UNITED STATES POSTAL SERVICE IS AN AGENCY
OF THE UNITED STATES OF AMERICA**

4.1 The United States Postal Service is an agency of the United States of America. The United States Postal Service is an "independent establishment of the executive

branch of the Government of the United States.” 39 U.S.C. §201. The United States of America, Defendant herein, at all times material hereto, owned, operated and controlled the United States Postal Offices in Beaumont, Texas and staffed said facilities with vehicles with its agents, servants, and/or employees.

V.

EMPLOYMENT AND COURSE AND SCOPE

5.1 At all times material hereto, all persons involved in supervising and operating the United States Postal Service vehicle in question were agents, servants, and/or employees of the United States of America, or some other agency thereof, and were at all times material hereto, acting within the course and scope of such employment.

VI.

FACTS

6.1 This is a Federal Tort Claims Action for monetary damages sustained by the Plaintiff resulting from personal injuries to Beulah Gaines, as a result of negligent operation of a United States Postal Service (USPS) vehicle.

6.2 This claim concerns an automobile collision on or about July 31, 2017, at approximately 10:33 a.m., in Beaumont, Texas. Plaintiff suffered personal injuries when her vehicle was crashed into by a USPS Mail Van owned by Defendant, and negligently operated by Eric Larousse, an employee with the United States Postal Service, who failed to yield the right of way to Plaintiff while attempting to back from a private drive, in Beaumont, Texas. Eric Larousse was an employee of

Defendant, acting in the course and scope of his employment during the act or omission that caused Plaintiff's injuries and damages.

- 6.3 The USPS employee's failure to exercise reasonable and ordinary care in operating a USPS vehicle on or about July 31, 2017, caused a collision between a USPS van and a personal vehicle owned and operated by Beulah Gaines. Plaintiff Beulah Gaines was lawfully operating her vehicle and otherwise exercising ordinary and reasonable care at the time of the collision. The USPS driver failed to yield the right of way while backing from a private drive, causing the collision.
- 6.4 As a direct and proximate result of Defendant's negligence, Plaintiff Beulah Gaines has suffered severe pain and injury to her neck, back, left hand, left knee, shoulders, and chest, with multiple disc herniations and protrusions, and soreness to the body in general.

VII.

CAUSE OF ACTION AGAINST THE UNITED STATES OF AMERICA

- 7.1 Defendant, the United States of America, was negligent in one or more of the following respects:
- (a) In failing to maintain control of his vehicle as persons of ordinary prudence would have kept under the same or similar circumstances.
 - (b) In failing to keep such lookout as persons of ordinary prudence would have kept under same or similar circumstances.
 - (c) In failing to proceed through an intersection when the intersection

can be safely entered without interference or collision with traffic using a different street or highway, in violation of Section 545.151, Texas Transportation Code, such violation constituting negligence per se.

- (d) In failing to yield the right of way to an approaching vehicle when entering the roadway from an alley, driveway or building, in violation of Section 545.256, Texas Transportation Code, such violation constituting negligence per se.
- 7.2 At all times mentioned herein, the employees, agents, and/or representatives of the United States Government were negligent and causative of the injuries and damages sustained by Plaintiff.

VIII.

DAMAGES

- 8.1 As a direct and proximate result of the negligence and carelessness of the Defendant, Plaintiff, Beulah Gaines has suffered severe pain and injury to her neck, back, left hand, left knee, shoulders, and chest, with multiple disc herniations and protrusions and soreness to the body in general. That because of such injuries she has suffered the following:
- A. Reasonable and necessary medical expense – past
 - B. Reasonable and necessary medical expense – future
 - C. Loss of earnings and earning capacity – past
 - D. Loss of earning capacity – future
 - E. Physical impairment – past
 - F. Physical impairment - future
 - G. Physical pain – past
 - H. Physical pain – future

- I. Mental anguish – past
 - J. Mental anguish – future
 - K. Property damage
- 8.2 As a proximate result of the Defendant's negligent acts or omissions, Plaintiff Beulah Gaines suffered injuries which would not otherwise have occurred. Plaintiff Beulah Gaines hereby pleads for all damages available under Texas state law, federal law, and equity including but not limited to, all damages as listed above. Specifically, Plaintiff Beulah Gaines seeks recovery from damages in the amount of \$287,000.00.

IX.

PRAYER

- 9.1 Plaintiff requests that Defendant be cited in terms of law to appear and answer herein; that Plaintiff has judgment against Defendant, for the amount of actual damages, and all other damages under applicable federal and state law to which they are entitled; for post judgment interest at the applicable legal rate; for all recoverable Court costs incurred in this litigation; and for such other and further relief, to which Plaintiff may show herself entitled.

Respectfully submitted,

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